

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE JOINT APPLICATION FOR THE	)	
TRANSFER OF THE WASTEWATER	)	
TREATMENT PLANT FROM BIG BEAR	)	CASE NO. 98-089
RESORTS, INC. TO BIG BEAR WASTEWATER,	)	
INC.	)	

ORDER

Big Bear Resorts, Inc. ("Big Bear Resorts") and Big Bear Wastewater, Inc. ("Big Bear Wastewater") have jointly applied for Commission approval of the transfer of Big Bear Resorts' wastewater treatment facilities to Big Bear Wastewater. Having considered the evidence of record and being otherwise sufficiently advised, the Commission finds that:

1. Big Bear Resorts is a Kentucky corporation that owns and operates a wastewater treatment facility which serves approximately 24 customers in Marshall County, Kentucky.
2. Big Bear Resorts' wastewater treatment facility is an extended aeration treatment system with a maximum treatment capacity of 35,000 gallons of wastewater per day and is considered a Class I Wastewater System. See 401 KAR 5:0010, Section 8.
3. Big Bear Resorts' wastewater treatment facility was installed and placed into service in early 1993.

4. M. Janet Caldemeyer and Richard Orr Meier are the principal shareholders of Big Bear Resorts. Caldemeyer is President of Big Bear Resorts. Meier is Vice-President and Secretary-Treasurer of Big Bear Resorts.

5. Big Bear Wastewater is a Kentucky corporation that was incorporated on February 1, 1996. Its principal shareholders are M. Janet Caldemeyer and Richard Orr Meier. Meier serves as its President. Caldemeyer serves as its Vice-President and Secretary-Treasurer.

6. Since its incorporation, Big Bear Wastewater has operated Big Bear Resorts' wastewater treatment facilities.

7. On January 23, 1997, the Kentucky Natural Resources and Environmental Protection Cabinet transferred Big Bear Resorts' Kentucky Pollutant Discharge Elimination System permit (No. KY0025178) to Big Bear Wastewater.

8. Big Bear Wastewater employs two wastewater treatment plant operators who the Kentucky Board of Certification of Wastewater System Operators has certified to operate a Class I Wastewater System.

9. Big Bear Wastewater employs four persons to operate the Big Bear Resorts' wastewater treatment facilities. These persons are also employees of Big Bear Resorts. Prior to the transfer of operations to Big Bear Wastewater, these employees were responsible for the operation of the wastewater treatment facilities.

10. On December 31, 1997, Big Bear Resorts sold to Big Bear Wastewater the wastewater treatment facilities for \$135,753.77. These facilities included the wastewater treatment plant, all sewer collection mains, and related plant and equipment. A bill of sale and interest-bearing note evidenced the transfer. Under the

terms of the note, Big Bear Wastewater is to pay the sales price over a 20-year period at an interest rate of 9.5 percent. This transaction did not transfer ownership of the land upon which the wastewater treatment plant is situated or any easements for the wastewater treatment plant's sewage collection mains. Big Bear Resorts and Big Bear Wastewater intend to execute a lease agreement at a future date for the land upon which the wastewater treatment plant is situated. Neither the bill of sale nor any other document evidencing the transaction has been recorded with the Marshall County Clerk's Office.

11. Big Bear Wastewater will continue to employ the same persons who operated the wastewater treatment plant since February 1, 1996.

12. Big Bear Wastewater has executed a performance bond (No. 022006376) in the amount of \$5,000 with Amwest Surety Insurance Company of Calabasas, California, to ensure the continuity of wastewater treatment service.

13. Big Bear Wastewater has the financial, technical, and managerial abilities to provide reasonable service to those persons whom Big Bear Resorts currently serves.

14. KRS 278.020(4) provides that "[n]o person shall acquire or transfer ownership of, or control, or the right to control, any utility under the jurisdiction of the commission by sale of assets . . . without prior approval of the commission [emphasis added]." Failure to obtain Commission approval prior to the transfer of control voids the transaction.

15. As Big Bear Resorts and Big Bear Wastewater failed to obtain Commission approval prior to the December 31, 1997 transfer, that transfer is null and void.

16. A transfer of control and ownership of the Big Bear Resorts' wastewater treatment facilities from Big Bear Resorts to Big Bear Wastewater that is effective after the date of this Order and which is executed under the same terms and conditions as the void December 31, 1997 transfer should be approved.

17. Because of the common ownership of Big Bear Resorts and Big Bear Wastewater, any transaction between these entities should be considered a transaction between affiliated entities. In any future rate proceeding, Big Bear Wastewater will be required to demonstrate the reasonableness of all transactions with Big Bears Resorts.

IT IS THEREFORE ORDERED that:

1. The transfer of the wastewater treatment facility and related facilities from Big Bear Resorts to Big Bear Wastewater that occurred on December 31, 1997 is void.

2. The proposed transfer of the wastewater treatment facility and related facilities from Big Bear Resorts to Big Bear Wastewater, if executed after the date of this Order and under the same terms as the void transfer, is approved.

3. Within 30 days of the date of this Order, Big Bear Wastewater shall file the journal entry or entries made to record the transfer. Big Bear Wastewater shall record plant at original cost and shall calculate accumulated depreciation from the original in-service date to the date of this Order.

4. Within 30 days of the date of this Order, Big Bear Wastewater shall revise its annual financial report to the Commission for Calendar Year 1997 to

reflect that no transfer of wastewater treatment facilities occurred prior to the date of this Order.

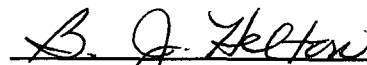
5. Within 30 days of the date of this Order, Big Bear Wastewater shall file with the Commission its long-term lease agreement with Big Bear Resorts for rental of the land upon which the treatment plant sits.


6. Within 30 days of the date of this Order, Big Bear Wastewater shall provide a new Bill of Sale and the related debt agreement for the purchase of the treatment plant.

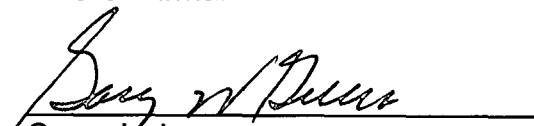
7. Within 10 days of the date of this Order, Big Bear Wastewater shall file an adoption notice pursuant to Administrative Regulation 807 KAR 5:011, Section 11.

Done at Frankfort, Kentucky, this 21st day of September, 1998.

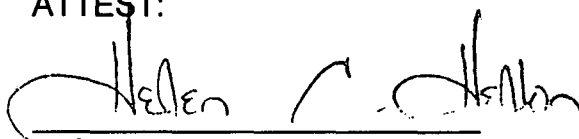
PUBLIC SERVICE COMMISSION

  
Chairman

  
Vice Chairman

  
Commissioner

ATTEST:

  
Executive Director